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In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 329

ARKANSAS LOUISIANA GAS COMPANY,
Petitioner,

v.

LEE B. THOMPSON, TRUSTEE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINION BELOW

The order of the District Court (R. 25-33) is reported in 30 F. R. D. 181; it did not deliver an opinion upon the rendering of such order. The opinion of the Court of Appeals (R. 97-102) is reported in 303 F. 2d 129.

QUESTIONS PRESENTED

1. Whether the members and creditors of an unincorporated association are necessary parties to an interpleader

suit to which a Federal receiver appointed for such association is a party.

2. Whether, under the special facts of this case, an appointment by a Federal District Court of a receiver for an unincorporated association, with service of notice upon the members of the organization board of such association, but without notice to the members of the organization, is void for lack of due process.

3. Whether subsequent proceedings, including proceedings involving a motion to dismiss the receivership, with service of notice by mail and publication to the members and creditors of such unincorporated association, have cured any defect, if any, in the original appointment of such receiver.

4. Whether, under the facts of this case, the members and creditors of such unincorporated association have waived or become estopped to assert any right to protest the appointment of said receivers.

STATEMENT

The statement set forth by Petitioner is correct, and is supplemented by the following comments. This lawsuit is an interpleader suit brought by Petitioner to determine title to a portion of the proceeds from the sale of gas and condensate produced from a Unit located in Panola County, Texas, which proceeds have accumulated since production was first commenced in 1952. The proceeds in question are attributable to an undivided one-fourth (1/4th) mineral interest in a 184 1/4 acre tract of land included in the Unit. Petitioner is the pur-

chaser and stakeholder of such proceeds. Respondents, who are seeking to recover such proceeds, claim to be the owners of said undivided one-fourth (¼th) interest in the minerals under said tract as follows:

> One-half (½) of said interest is owned by Lee B. Thompson, Trustee, and E. H. Patton, Jr., Ancillary Trustee.
>
> One-fourth (¼th) of said interest is owned by Bonnie Louise Mollet.
>
> One-fourth (¼th) of said interest is owned by Mary S. Dickerson.

Said entire interest is subject to oil and gas leases owned by the remaining Respondents.

At present no adverse claims are asserted to the interests claimed by Respondents. Their interests were, at one time, clouded, however, by the fact that they claim as successors and assigns of an equity receiver appointed on May 7, 1930, by a Federal District Court in Oklahoma, who failed to bring ancillary proceedings in Texas. The Receiver, Fred P. Branson, was appointed by the United States District Court for the Western District of Oklahoma in Cause No. 1117-Equity, styled "R. F. Hodson v. T. A. White et al." (sometimes referred to herein as the "Oklahoma suit") as receiver of the properties of a certain unincorporated association named "The Universal Oil & Gas Company" and of the properties of the Organization Board (sometimes called the "Preorganization Board") of said Company. (R. 8.) Fred P. Branson was succeeded as receiver by Lee B. Thompson, one of the Respondents, who was appointed Trustee in place of Fred P.

Branson by order of the Oklahoma court dated September 20, 1932. (R. 9.)

After the commencement of this interpleader suit and for the purpose of removing any cloud from Respondents' title to interests in the said 184¼ acre tract of Texas land, Lee B. Thompson, with authority from the Oklahoma court, initiated ancillary proceedings in the United States District Court for the Southern District of Texas, Houston Division, being cause No. 11685, styled "In the Matter of Lee B. Thompson, Trustee", in which proceeding E. H. Patton, Jr., one of the Respondents, was appointed Ancillary Trustee and authorized to take charge of and administer the interests of the Universal Oil & Gas Company, the Organization Board of such company, and Lee B. Thompson, Trustee, or any of them, in the said 184¼ acre tract of Texas land. (Although both Lee B. Thompson and E. H. Patton, Jr. were designated in their respective appointments as Trustees, they are, in effect, by virtue of the authority vested in them through their appointments, equity receivers.) Thereafter, and with authority of the Houston court, Patton executed and delivered instruments fully ratifying and confirming the interests claimed by all other Respondents by and through assignments, leases and conveyances emanating from Fred P. Branson and Lee B. Thompson in their capacity as receivers. (R. 17-20.)

The original receiver, Fred P. Branson; and his successor, Lee B. Thompson, were appointed upon notice only to the members of the Organization Board of the association. (R.

7-8.) However, the members, shareholders and creditors of the association were given notice in connection with subsequent portions of the receivership proceedings, including the following:

1. In February, 1958, a motion by H. A. Kroeger, a creditor and interest holder of the association, to dismiss the receiver was considered by the Court and dismissed. (R. 15-17.)

2. In September, 1958, the Court, upon hearing, entered an order authorizing the receiver to initiate ancillary proceedings in Texas. (R. 17-18.)

3. In February, 1960, the District Court below, upon hearing, appointed E. H. Patton, Jr., as Ancillary Trustee or Receiver. (R. 19-20.)

Prior to each of these proceedings notice was given in the manner specifically prescribed by the Court to the members, shareholders and creditors of the association, and in each instance, none of said persons appeared to question or attack the receivership. None of said persons, except H. A. Kroeger, during the 32 years which have elapsed since the original appointment was made have in any way questioned, attacked or complained of the receivership. These persons, who in 1930 numbered in excess of five hundred (500) and were then scattered throughout the United States and several foreign countries, together with Respondents, were named by Petitioner as defendants in initiating its interpleader action below. (R. 2-3.) Recognizing that any attempt to personally serve process upon this vast group would dissipate the funds which are the subject matter of the suit, Lee B. Thompson and E. H. Patton, Jr., moved to enjoin Petitioners from caus-

ing the issuance and service of such process. The District Court found that the interests of such persons are adequately represented in this suit by Lee B. Thompson, Receiver, and E. H. Patton, Jr., Ancillary Receiver, and that such persons are not necessary parties, and by order dated October 5, 1961, granted the injunction prayed for. (R. 20.) The Court of Appeals concurred in the findings and conclusions of the District Court and on May 17, 1962, affirmed the order granting the injunction. (R. 97, 102.)

ARGUMENT

I.

There Is No Conflict of Decision

In urging this Court to grant the Writ, Petitioner relies first and foremost upon its contention that the decision of the Court below is in conflict with the decisions of the Third Circuit Court of Appeals in *Nottebaum v. Leckie, 31 F. 2d 536 (1929)* and *Noxon Chemical Products Co. v. Leckie, 39 F. 2d 318 (1930)*. At page 12 of the Petition, the Petitioner describes the alleged conflict as follows:

> "In the *Leckie* cases, it was held that in a suit by an individual, the appointment of permanent receivers of the defendant corporation without service of process upon it or appearance by it was void *ab initio* for lack of due process * * *. On the other hand, in the instant case, the Court of Appeals held (R. 97-103) that, in a suit brought by a member of an unincorporated association on behalf of himself and all others similarly situated, a federal district court had full power and authority to appoint permanent receivers of such association, which was a party to the suit only to any

> extent it may have been a party through the named defendants doing business as its 'Organization Board,' with notice only to the members of such board and without notice to the other members of the association or its creditors * * *."

This description of the two cases emphasizes that in each there was a lack of notice as to some parties interested in original receivership proceedings. The dissimilarity of the two cases becomes apparent, however, when attention is shifted to the identity of the parties to whom no notice was given. In the *Leckie* case no notice was given to the defendant corporation, the very entity for which the receiver was to be appointed. In this case, the entity for which the receivers were to be appointed, i. e., the unincorporated association, was served with notice through members of its organization board, who were its acting agents and the managers of its affairs. The only persons not served with notice were the more than 500 members of the association, and its creditors, who were scattered throughout the world and were inactive in the affairs of the association.

The Federal courts have held that service of process upon the duly authorized agents of an unincorporated association is sufficient to subject that association to the jurisdiction of the court, so as to allow that court to render a judgment in personam, *Operative Plasterers', etc., Ass'n. v. Case, 93 F. 2d 56 (D. C. 1937)*. The Federal courts have also held that a state may pass a law which allows suit against an unincorporated association or partnership as an entity, upon notice to its duly authorized agents and without service upon each of the members of such association or partnership. *Operative*

Plasterers', etc., Ass'n. v. Case, supra. Thus, where service of process is had upon the duly authorized agents of an unincorporated association, lack of notice to all the members of such association is, at the very least, not a denial of due process of law as required by the Constitution of the United States.

In the *Leckie* case the Court of Appeals pointed to various objectionable features involved in the original proceedings, none of which are present in the case at hand. In the *Leckie* case, the original appointment of receivers was made without notice to anyone and was coupled with a sweeping injunction which effectively put out of business the corporation for which the receivers were appointed and dispossessed such corporation of all its assets. This summary and *ex parte* relief was granted by the court without allegation or proof by the moving party that irreparable damage or loss would result if such relief were not immediately granted. Instead, the order was entered upon false allegations that the corporation's plant had ceased operation, when in fact the plant was in full operation. Further, at no time was the moving party required to prove a case justifying the relief sought since the proceedings following the initial appointment were based upon an order of the court directing the creditors and shareholders of the corporation to show cause why the receivership should not be continued. In these proceedings also the corporation was given no notice or opportunity to be heard. None of these objectionable features, condemned by the Court of Appeals in the *Leckie* case, are shown to have been in-

volved in the original receivership proceedings in the case at hand.

In the *Leckie* case, it would appear that the court could quite easily have given to the corporation notice and an opportunity to be heard and could have put the moving party to the proof of a case justifying the relief granted. Instead, the initial proceedings in the *Leckie* case are clothed in an atmosphere of unnecessary haste.

On the other hand, the original proceedings in the case at hand involved full notice to the members of the Organization Board of the Universal Oil & Gas Company, who were the individuals actively engaged in managing the affairs of the association. In contrast to the *Leckie* case, the parties as to whom no initial notice was given, were the several hundred investors in the association scattered around the world who were not actively engaged in the affairs of the association. The original proceedings in the *Leckie* case were unnecessarily summary in nature, while the Oklahoma court in the case at hand, took such action as was practical under the circumstances to afford to the parties most vitally interested the best possible opportunity to be heard.

The recitation of facts set out in the *Leckie* opinions demonstrates that the original proceedings there involved and the atmosphere in which such proceedings were conducted were characterized by unnecessary haste, that they were unnecessarily summary in nature, and that they were so disloyal to fundamental concepts of fairness as to offend the Court's

notion of traditional due process. This is not true concerning the original proceedings involved in the case at hand.

For all of these reasons Respondents contend that the facts and circumstances surrounding the original proceedings in the *Leckie* case and in this case differ in substantial and material respects and justify the differing results reached by the Courts of Appeals; and thus Respondents assert that no conflict exists between these decisions.

II.

The Decision Below Was Clearly Correct

As pointed out above, the circumstances of this case as they pertain to the original receivership proceedings are quite different from those of the *Leckie* case, and the conclusions reached by the Court below as to such proceedings are clearly correct. However, the major emphasis of the decision below is placed upon the events which transpired subsequent to the original receivership proceedings, on the basis of which the Court concluded that regardless of whether or not the original proceedings were in some way defective, the present status of Lee B. Thompson, as Receiver, and of E. H. Patton, Jr., as Ancillary Receiver is now fully validated.

The Court below points to the fact that some thirty (30) years or more have elapsed since the original appointment of Fred P. Branson in 1930, and the appointment of Lee B. Thompson in 1932, to which proceedings the members of the Organization Board of Universal Oil & Gas Company were parties, and that during such prolonged period no complaint

of or attack upon the receivership was made by any party until 1958, when on January 15, 1958, H. A. Kroeger, a creditor and interest holder of the association filed a Motion in the Oklahoma suit to dismiss Lee B. Thompson as receiver. Notice of this Motion and the hearing to be conducted thereon was given to all members and creditors of the Association in the manner prescribed by the Court, i.e., by mailing such notice to the last known addresses of all parties who had filed claims in the suit and by publication of notice to all other interested parties, and following hearing thereon, the Motion was dismissed. (R. 15-17.) Thereafter, on September 8, 1958, Lee B. Thompson, Receiver, filed an amended application for authority to institute proceedings for the appointment of an ancillary receiver in the United States District Court for the Southern District of Texas to intervene in this interpleader suit. (R. 17-18.) Upon order of the Court, notice of such application and the hearing to be conducted thereon was served and given by publication and by mail to all creditors and members of the association, and to all other interested parties. These parties were also given notice in a manner prescribed by the Federal District Court for the Southern District of Texas, Houston Division, in February, 1960, in a proceeding in which E. H. Patton, Jr., was appointed as Ancillary Receiver. (R. 19-20.)

By virtue of these events, the Court correctly concluded that regardless of any defect, if any, which may have existed

in the original proceedings, the present status of Lee B. Thompson as Federal Receiver and E. H. Patton, Jr., as Ancillary Receiver, is now fully validated and cannot be attacked either by direct appeal in the receivership suit itself, or by collateral attack in some other action such as the interpleader action here involved. *Universal Savings & Trust Company v. Stoneburner, 113 F. 251 (4th Cir. 1902).*

The holding of the Court below that any defect in the original appointments was cured by subsequent proceedings is in no way in conflict with the *Leckie* decisions. The opinion in *Nottebaum v. Leckie, supra,* recognizes, at least by implication, that subsequent proceedings properly brought can cure defects pertaining to lack of adequate notice in proceedings in which receivers are appointed. Of course, in the proceedings brought subsequent to the original appointments in the *Leckie* case, the Court again failed to serve the very party for which the receivers had been appointed, and which had received no notice in connection with the original appointments, i.e., the corporation.

III.

There Is No Important Question of Federal Law

The holding of the Court below is justified by any one of several conclusions reached by the Court, and it cannot be said that the decision involves a ruling upon any single im-

portant question of Federal law about which the law is unsettled. The opinion of the Court below states no rules of general application concerning minimum notice requirements in connection with the appointment of Federal receivers and draws no general conclusions as to proceedings or happenings which will cure defective appointments. The Court holds only that under the peculiar facts of this case Lee B. Thompson and E. H. Patton, Jr., are now validly acting as Federal Receivers and in the interpleader action below, adequately represent the parties interested in the receivership estate. It is unlikely that this strange combination of events stretching back over a period of 32 years would ever arise again, and for that reason the decision below will not affect the rights and interests of persons other than the litigants themselves.

At the very beginning of the section of the Petition entitled "Reasons For Granting The Writ", it is asserted that the correctness of the decision below should be reviewed to protect Petitioner againsf the danger of double liability. Petitioner's fear of double liability is hypothetical since no one is actively contesting Respondents' claim to the property involved in this suit, and Petitioner itself does not affirmatively assert that the decision below is incorrect. Nevertheless, Petitioner's fear, even if well founded, that it might be subject to double liability if the decision below is wrong does not render this case important enough to justify Petitioner's request for Supreme Court review.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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September 11, 1962.

PROOF OF SERVICE

The undersigned counsel for Respondents, Lee B. Thompson, et al., certifies that copies of the foregoing Brief for Respondents in Opposition have been served upon Petitioner, Arkansas Louisiana Gas Company, in care of Cecil N. Cook, Messrs. Butler, Binion, Rice & Cook, Esperson Building, Houston 2, Texas; Messrs. Blanchard, Goldstein, Walker & O'Quin, First National Bank Building, Shreveport, Louisiana; and Messrs. Turner & Bankhead, Carthage, Texas, attorneys of record for Petitioner, by depositing same in the United States mail, first class postage prepaid, addressed to them at their respective post office addresses stated above, this 11th day of September, 1962.

/s/ Bradford D. Corrigan

BRADFORD D. CORRIGAN, JR.,
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